

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

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Court of Appeals, District of Columbia

JANUARY TERM, 1902.

No. 1086.

No. 3, SPECIAL CALENDAR.

FRANCIS J. KIECKHOFFER, APPELLANT,

vs.

THE UNITED STATES.

COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

JANUARY TERM, 1902.

No. 1086.

No. 3, SPECIAL CALENDAR.

FRANCIS J. KIECKHOEFER, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

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In the Court of Appeals of the District of Columbia.

FRANCIS J. KIECKHOEFER, Appellant, }
vs. } No. 1086.
THE UNITED STATES.

a Supreme Court of the District of Columbia.

UNITED STATES }
vs. } No. 21452. Criminal.
FRANCIS JULIUS KIECKHOEFER.

UNITED STATES OF AMERICA, } ss :
District of Columbia,

Be it remembered that in the supreme court of the District of Columbia, at the city of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above-entitled cause, to wit:

1 & 2 *Order Allowing Special Appeal.*

Filed April 1, 1901.

In the Court of Appeals of the District of Columbia.

FRANCIS J. KIECKHOEFER, Petitioner, }
vs. } No. 90, Special Calendar.
THE UNITED STATES. } No. 21452, Criminal Docket.

Petition for Allowance of a Special Appeal.

On consideration of the petition for the allowance of a special appeal from the orders of the supreme court of the District of Columbia, entered herein on the 20th day of March, A. D. 1901, it is now here ordered by the court that said appeal be, and the same is hereby, allowed.

M. F. MORRIS,
SETH SHEPARD,
Associate Justices.

March 29, 1901.

A true copy.

Test:

[SEAL.] ROBERT WILLETT, Clerk.

* * * * *

Indictment.

Filed in Open Court Oct. 4, 1897.

In the Supreme Court of the District of Columbia, Holding a Criminal Term, April Term, A. D. 1897.

DISTRICT OF COLUMBIA, ss:

The grand jurors of the United States of America in and for the District of Columbia aforesaid upon their oath do present:

That on the second day of July, in the year of our Lord one thousand eight hundred and ninety-five, and at the District aforesaid, one Francis Julius Kieckhoefer, late of the District aforesaid, was an officer in the service of the said United States, to wit, the Chief of the Bureau of Accounts of the Department of State of the said United States, and that on the day and year aforesaid and at the District aforesaid the said Francis Julius Kieckhoefer did knowingly, unlawfully, and wilfully embezzle and wrongfully convert to his own use divers moneys to a large amount and of great value, to wit, to the amount of eighteen thousand two hundred and twenty-nine dollars and ninety-eight cents, in the national currency of the said United States, provided, supplied, and furnished by and under the laws of the said United States, and of the value of eighteen thousand two hundred and twenty-nine dollars and ninety-eight cents, the several and respective kinds, descriptions, denominations, and values of which said moneys the grand jurors aforesaid have no means of ascertaining and therefore cannot particularly herein set forth, and which said moneys were then and there moneys of the said United States and the property of the said United States, which had then and there come into the possession and under the control of him, the said Francis Julius Kieckhoefer, in the execution of his said office of Chief of the said Bureau of Accounts and under color and claim of authority as such officer of the said United States, against the form of the statute in such case made and provided and against the peace and Government of the said United States.

Second Count.

And the grand jurors aforesaid upon their oath aforesaid do further present:

That on the twenty-second day of October, in the year of our Lord one thousand eight hundred and ninety-five, and at the District aforesaid, the said Francis Julius Kieckhoefer was an officer in the service of the said United States, to wit, the Chief of the Bureau of Accounts of the Department of State of the said United States, and that on the day and year last aforesaid and at the District aforesaid the said Francis Julius Keickhoefer did knowingly, unlawfully, and wilfully embezzle and wrongfully convert to his own use divers other moneys to a large amount and of great value, to wit,

to the amount of sixteen thousand eight hundred and thirty-seven dollars and fifty cents, in the national currency of the said United States, provided, supplied, and furnished by and under the laws of the said United States, and of the value of sixteen thousand eight hundred and thirty-seven dollars and fifty cents, the several and respective kinds, descriptions, denominations, and values of which said last-mentioned moneys the grand jurors aforesaid have no means of ascertaining and therefore cannot particularly herein set forth, and which said last-mentioned moneys were then and there, to wit, on the day and year last aforesaid and at the District aforesaid, moneys of the said United States and property of the said United States which had then and there, to wit, on the day and year last aforesaid and at the District aforesaid, come into the possession and under the control of him, the said Francis Julius Kieckhoefer, in the execution of his said office of Chief of the said Bureau of Accounts and under color and claim of authority as such officer of the said United States, against the form of the statute in such case made and provided and against the peace and Government of the said United States.

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Third Count.

And the grand jurors aforesaid upon their oath aforesaid do further present:

That on the twenty-fifth day of October, in the year of our Lord one thousand eight hundred and ninety-five, and at the District aforesaid, the said Francis Julius Kieckhoefer was an officer in the service of the United States, to wit, the Chief of the Bureau of Accounts of the Department of State of the said United States, and that on the day and year last aforesaid and at the District aforesaid the said Francis Julius Kieckhoefer did knowingly, unlawfully, and wilfully embezzle and wrongfully convert to his own use fifteen bonds of the said United States, each of the denomination and each of the value of one thousand dollars, which said bonds were respectively obligations of the said United States for the payment of money issued under and in accordance with the provisions of an act of the Congress of the said United States approved on the fourteenth day of July, in the year of our Lord one thousand eight hundred and seventy, and of an act of the said Congress amendatory thereof, approved on the twentieth day of January, in the year of our Lord one thousand eight hundred and seventy-one, and which said bonds have been and are commonly known as and called one-thousand-dollar United States four per cent. coupon bonds of nineteen hundred and seven, and which said bonds were then and there, to wit, on the day and year first in this count mentioned and at the District aforesaid, respectively subsisting and unpaid obligations of the said United States, and which said bonds then and there, to wit, on the day and year first in this count mentioned and at the District aforesaid, belonged to and were the property of the said United States, and which said bonds had then and there, to wit, on the day and

year first in this count mentioned and at the District aforesaid, come into the possession and under the control of him, the said Francis Julius Kieckhoefer, in the execution of his said office of Chief of the said Bureau of Accounts and under color and claim of 6 & 7 authority as such officer of the said United States, against the form of the statute in such case made and provided and against the peace and Government of the said United States.

* * * * *

8

HENRY E. DAVIS,
*Attorney of the United States in and
for the District of Columbia.*

9 Endorsement: 10, 23, '97. Plea, not guilty. M. 31, p. 434. No. 21452. United States vs. Francis Julius Kieckhoefer. Vio. 5497, R. S. U. S., as amended (by act of Feb'y 3, 1879, 20th Stats., 380; 1 Rich Supp't, 213). Witnesses: Edward J. Renick, Clarence L. Barnard, W. P. Armstrong. A true bill. Charles H. Raub, foreman.

10

Demurrer.

Filed October 30, 1897.

In the Supreme Court of the District of Columbia, Holding a Criminal Term.

UNITED STATES	} No. 21452.
vs.	
FRANCIS JULIUS KIECKHOEFER.	

The defendant says that the indictment, and each count thereof, is bad in substance.

A. S. WORTHINGTON,
Att'y for Defendant.

Among the matter-of law to be argued in support of the foregoing demurrer are the following:

As to each of the counts in the indictment:

1. The facts averred constitute no offense under the laws in force in the District of Columbia at the time of the alleged commission thereof or at the time of the filing of the indictment.

2. No offense is stated of which this court has jurisdiction.

3. The averments are so general and uncertain that the defendant is not informed what he has to meet or protected from another prosecution for the same supposed offense.

4. It is not set forth what person or officer entrusted the defendant with the property alleged to have been converted by the defendant to his own use, nor how it came into his possession as disbursing clerk or as Chief of the Bureau of Accounts.

5. Section 5497 of the Revised Statutes of the United States as amended by the act of February 3, 1879 (20 Stat. at Large, 280),

applies only "where the offense is not otherwise punishable by some statute of the United States." There are pending in this court four indictments against this defendant for the same alleged offenses set forth in this indictment. The indictments referred to are numbered 20821, 20822, 21450, and 21451. If those indictments are good, this indictment is bad. If it is intended to charge the defendant with an offense not otherwise punishable, then the facts should be set forth which show that no other statute will reach the case.

6. It is averred that the defendant converted to his own use certain moneys and bonds, but there is no averment as to how he converted them to his own use, nor does the indictment contain any excuse for such omission.

7. The charge that the defendant converted to his own use, in some way unknown, divers moneys that cannot be described, taken with the generality of the other averments, amounts legally to no more than a charge that there is a balance due from the defendant to the Government—an averment which might be made the basis of a civil action, but which is insufficient to sustain an indictment.

8. The defendant is charged as Chief of the Bureau of Accounts. There is no statute authorizing the chief of that bureau as such to receive, hold, or disburse moneys or bonds of the United States. The facts relied upon to show that the defendant held such moneys and bonds in his capacity as Chief of the Bureau of Accounts should be set forth.

9. It is averred that the defendant held divers moneys and bonds "under color and claim of authority" as Chief of the Bureau of Accounts. The facts relied upon to show that the defendant claimed to hold said bonds by virtue of his said office should appear.

As to counts numbered 2, 3, 4, and 5:

It is not averred that at the time of the alleged embezzlement the moneys alleged to have been embezzled were in the possession of the defendant by virtue of his office as Chief of the Bureau of Accounts.

Supreme Court of the District of Columbia.

FRIDAY, *July 15th*, 1898.

The court resumes its session pursuant to adjournment, Chief Justice Bingham presiding.

* * * * *

UNITED STATES vs. FRANCIS JULIUS KIECKHOEFER.	}	No. 21452. Indicted for Vio. Sect. 5498, R. S. U. S. as Amended.
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Comes again the attorney of the United States, as the defendant, by his attorney, A. S. Worthington, Esquire; and thereupon, the defendant's demurrer to the indictment in this case coming on to be heard, after argument by counsel, it is considered by the court that said demurrer be, and it is hereby, overruled, with leave to said defendant to plead over as he may be advised.

14

Bill of Particulars.

Filed April 6, 1900.

In the Supreme Court of the District of Columbia, Holding a
Criminal Term.

THE UNITED STATES	}	No. 21452, Criminal Docket.
vs.		
FRANCIS J. KIECKHOEFER.		

Bill of particulars.

And now comes Thomas H. Anderson, attorney of the United States in and for the District of Columbia, and, on behalf of the said United States and in compliance with the order of the court heretofore passed in the premises, files the following bill of particulars of evidence to be offered for the said United States upon the trial of the above-entitled case:

First Count.

Upon such trial evidence will be offered in support of the averments contained in the first count of the indictment tending to prove:

1. That on the day named in said first count the defendant was the Chief of the Bureau of Accounts of the said Department of State, and that he had been such chief of said bureau for several years next preceding said day, and as such chief of said bureau he was an officer of the said United States within the meaning of the act of Congress of February 3, 1879, amendatory of section 5497 of the Revised Statutes of the United States.

2. That on the said day the defendant had in his possession and under his control as such officer a fund exceeding \$18,229.98 of the moneys of the said United States which had come into his possession and under his control in the execution of his said office of
15 chief of said bureau and under color and claim of authority as such officer, and that said fund was on deposit with Riggs and Company, bankers, in the city of Washington, in the said District of Columbia, and subject to his check, and that on said day he drew from said fund by check the sum of \$18,229.98, the proceeds of which were delivered to and came into his possession; that on said day and at the said District of Columbia he wrongfully and without right or authority and in fraud of the United States converted the said sum of \$18,229.98 to his own personal and private use and embezzled the same, and that the tenor of said check cannot be herein set forth because the same is in his, defendant's, possession.

Second Count.

The specifications to the first count, with and as qualified by the following changes therein, may stand and be taken as specifications for the second count, viz:

In lieu of the words "on the day named in said first count," in the first line of paragraph 1 of the specifications to said first count, insert the words "on the day named in said second count."

In lieu of the figures "18,229.98," where they occur in paragraph 2 of the specifications to said first count, insert the figures "16,837.50."

Third Count.

Upon such trial evidence will be offered in support of the averments contained in the third count of the indictment tending to prove:

1. That on the day named in the said third count the defendant was the Chief of the Bureau of Accounts of the Department of State of the said United States, and that he had been such chief of
16 said bureau for several years next preceding said day, and that as such chief of said bureau he was an officer of the said United States within the meaning of the act of Congress of February 3, 1879, amendatory of section 5497 of the Revised Statutes of the United States.

2. That on said day defendant had in his possession and under his control as such officer fifteen subsisting obligations of the United States, each of the denomination and each of the value of one thousand dollars, of the kind called and known as one-thousand-dollar four per cent. bonds of 1907, and which were issued under the acts of Congress mentioned in said count, and that said bonds were the property of the said United States and had come into such possession and under such control of him, the said defendant, in the execution of his said office of Chief of the said Bureau of Accounts and under color and claim of authority as such officer of the said United States.

3. That Riggs and Company, bankers, of the city of Washington, in the District of Columbia, bought said bonds for and on account of the United States upon the order of the defendant, and that the price of the same was paid by defendant to said bankers out of moneys of the said United States which had come into the possession and under the control of him, the defendant, in the execution of his said office of Chief of said Bureau of Accounts, and under color and claim of authority as such officer of the said United States.

4. That said bankers delivered said bonds to the defendant as such officer of the said United States, and that, so having them in his possession and under his control, as aforesaid, he, on the day aforesaid and at the said District, wrongfully and without right or authority and in fraud of the United States, converted the same to his own personal and private use by making sale of the same and retaining the proceeds of such sale, and thereby embezzled the said bonds.

Fourth Count.

17 The specifications to the third count of the indictment, with and as qualified by the following changes therein, may stand and be taken as specifications for the fourth count, viz:

In lieu of the words "Chief of the Bureau of Accounts," where they occur in the several specifications to said third count, insert the words "disbursing clerk."

Fifth Count.

The specifications to the third count of the indictment, with and as qualified by the following changes therein, may stand and be taken as specifications for the fifth count, viz :

Insert after the words "United States," where they occur in the third line of paragraph 1 of the specifications to said third count, the following words: "and also the disbursing clerk of the said Department of State of the said United States;" insert after the word "bureau," in the fourth line of said paragraph 1 of the specifications to said third count, the words "and such disbursing clerk;" and insert after the word "bureau," in the fifth line of said paragraph 1 of the specifications to said third count, the words "and such disbursing clerk."

Insert after the words "Bureau of Accounts," in the ninth line of paragraph 2 of the specifications to said third count, the words "and such disbursing clerk."

Insert after the words "Bureau of Accounts," in the seventh line of paragraph 3 of the specifications to said third count, the words "and such disbursing clerk."

THOS. H. ANDERSON,
*Attorney of the United States in and
for the District of Columbia.*

[Endorsed:] 21452. Bill of particulars.

18

Motion to Quash Indictment.

Filed March 15, 1901.

In the Supreme Court of the District of Columbia, Holding a Criminal Term.

UNITED STATES	}	No. 21452, Criminal Docket.
vs.		
FRANCIS J. KIECKHOEFER		

The defendant moves the court to quash the indictment in this case, and each and every count thereof, for the following reasons:

1st. Because said bill of particulars and each and every count thereof is uncertain, indefinite, and insufficient.

2nd. Because by the bill of particulars, which has been filed herein, it appears that as to each and every count of the indictment that the defendant is being prosecuted under said indictment for an alleged offense entirely different from that embraced in said counts respectively.

A. S. WORTHINGTON,
Attorney for Defendant.

[Endorsed:] 21452. Motions to quash, &c.

19

Motion to Strike Out Bill of Particulars.

Filed March 15, 1901.

In the Supreme Court of the District of Columbia, Holding a Criminal Term.

UNITED STATES	}	No. 21452, Criminal Docket.
vs.		
FRANCIS J. KIECKHOEFER.		

The defendant moves the court to strike out the bill of particulars heretofore filed in this case by the United States, and to require the United States to give to the defendant a better bill of particulars. This motion is based upon the following grounds:

1st. As to each of the nine counts of the indictment in this case the bill of particulars is indefinite and insufficient.

2nd. As to each of said counts the said bill of particulars is inconsistent therewith.

3rd. Said bill of particulars as to each of said counts is defective, in that it does not show whether the money or bonds referred to therein was a part of the public money or property or a part of the so-called trust funds held by the Department of State.

4th. That the statute under which said indictment is framed applies to cases "where the offense is not otherwise punishable by some statute of the United States" only, and said bill of particulars does not as to any count of said indictment specify or indicate wherein the alleged offense imputed to the defendant is distinguished from offenses punishable under statutes relating to embezzlement of public funds by disbursing officers or other persons charged with the custody of public money.

A. S. WORTHINGTON,
Attorney for Defendant.

20

Supreme Court of the District of Columbia.

WEDNESDAY, March 20, 1901.

The court resumes its session pursuant to adjournment, Mr. Justice Cole presiding.

UNITED STATES	}	No. 21452. Indicted for Vio. Sec. 5497, R. S. U. S.
vs.		
FRANCIS J. KIECKHOEFER.		

Come as well the attorney of the United States as the defendant by his attorney, Augustus S. Worthington, Esquire; and thereupon it is considered by the court that the defendant's motion to quash and his motion to strike out bill of particulars be, and they are hereby, overruled.

21 UNITED STATES OF AMERICA, } ss :
 District of Columbia,

Supreme Court of the District of Columbia.

I, John R. Young, clerk of the supreme court of the District of Columbia, hereby certify the foregoing pages, numbered from 1 to 21, inclusive, to be a true and correct transcript of the record, as per directions of counsel herein filed, copy of which is made part of this record, in cause No. 21452, criminal, United States vs. Francis Julius Kieckhoefer, as the same remains upon the files and of record in said court.

In testimony whereof I hereunto subscribe
 Seal Supreme Court my name and affix the seal of said court, at
 of the District of the city of Washington, this 15th day of April,
 Columbia. A. D. 1901.

JOHN R. YOUNG, *Clerk.*

22 In the Court of Appeals of the District of Columbia, October
 Term, 1901.

FRANCIS J. KIECKHOEFER, Appellant, }
 vs. } No. 1086.
 THE UNITED STATES.

It is hereby stipulated between counsel for the respective parties that in the printing of the transcript of the record in the above cause the following parts may be omitted, viz:

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It is further stipulated that upon the argument of the cause reference may be had to the original transcript as occasion may require.

A. S. WORTHINGTON,

For Appellant.

ASHLEY M. GOULD,

U. S. Att'y, D. C.,

HUGH T. TAGGART,

Ass't U. S. Att'y, D. C.,

For Appellees.

(Endorsed :) No. 1086. Court of Appeals, D. C., October term, 1901. Francis J. Kieckhoefer, appellant, vs. The United States. Stipulation as to printing record. Court of Appeals, District of Columbia. Filed Dec. 20, 1901. Robert Willett, clerk.

Endorsed on cover: District of Columbia supreme court. No. 1086. Francis J. Kieckhoefer, appellant, vs. The United States. Court of Appeals, District of Columbia. Filed Apr. 16, 1901. Robert Willett, clerk.

